Sharing your information: Tightening the screws on cross border arrangements

1 April 2015

In brief

In early March the newly formed Joint International Tax Shelter Information & Collaboration (JITSIC) Network met in Paris for the first time signalling the commencement of the most significant multinational tax office information sharing project undertaken. This ambitious initiative provides the mechanism for revenue authorities to share taxpayer information relevant to international tax affairs across an unprecedented number of jurisdictions. The initiative will likely have repercussions for taxpayers subject to compliance audits in respect of international tax issues and will likely see complex or aggressive cross border structures come under increased scrutiny. The new commitment will also likely play a significant role in the international fight against base erosion and profit shifting (BEPS).

In detail

The 'original JITSIC'

The original JITSIC, formerly known as the Joint International Tax Shelter Information Centre, commenced as a joint revenue authority initiative of Australia, Canada, the United Kingdom and the United States to counter abusive tax schemes and tax avoidance structures. It was created in 2004 with the original office based in Washington D.C. It shared information between countries under the authority of Exchange of Information articles in Double Tax Agreements (DTAs). JITSIC later established another office in London and added countries to its growing network. Japan, Germany, South Korea, France and China all accepted invitations to join and assist the centre achieve its overarching purpose to share expertise relating to the identification and understanding of what are considered to be abusive tax arrangements.

JITSIC has been proactive in developing techniques for early identification and strategies for deterrence and sought to increase public awareness broadly of civil and criminal risks associated with promoting and investing in abusive tax schemes.

Under the JITSIC framework, Competent Authorities were able to exchange information under the relevant DTAs and put the various international pieces together to examine complex cross border transactions, such as non-commercial capital and finance arrangements, aggressive transfer pricing strategies and foreign tax credit generation schemes. Similarly, structures involving tax havens and trust structures in connection with high net wealth individuals also came under JITSIC scrutiny.

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Evolution of the JITSIC Network

In recent times tax administrators felt that the information exchange should not be limited to the original JITSIC member countries. Accordingly, following the 9th meeting of the OECD Forum on Tax Administration (FTA) in Dublin last year, the 45 OECD and non-OECD countries that make up the FTA determined that the composition of JITSIC would be expanded and remodelled with a greater focus on collaboration. Reflecting this change, the taskforce was renamed to the Joint International Tax Shelter Information & Collaboration (still called JITSIC) with an emphasis on collaboration of information exchange and a de-emphasis on the need for exchange to occur through central hubs. The focus of the new JITSIC Network is to create a broader international platform representing more FTA countries in their fight against perceived cross border tax avoidance.

The JITSIC Network is open to all FTA members on a voluntary basis and integrates existing JITSIC cooperation procedures among tax administrators within the larger FTA network. The revised JITSIC Network’s first meeting last month saw almost 40 member jurisdictions participate. The inclusion of so many countries provides a much greater opportunity for revenue authorities to broaden information exchange programs and conduct coordinated casework projects and initiatives.

During the first meeting participating countries made a commitment to the Network, each nominating a single point of contact and agreeing a framework which underpins and guides the manner in which work flows will be managed through a secure centralised website.

ATO involvement in the Network

The Commissioner of Taxation Chris Jordan, Vice-Chairman of the FTA, attended the JITSIC Network’s first meeting in Paris. According to the Commissioner, the network is a mechanism for participating jurisdictions to more effectively understand and address global taxation enforcement risks and issues. The Commissioner reiterated that multinational tax avoidance is a global problem which consequently requires a global solution.

Following the meeting the Australian Taxation Office (ATO) released a statement outlining the ATO’s involvement in the JITSIC Network and noting its importance in helping the ATO to efficiently combat multinational tax evasion using the finite resources that the ATO and other revenue authorities can access.

The ATO also noted that it is anticipated the Network will play an important role in countering BEPS tax avoidance.

Somewhat cryptically the ATO also noted that the Network agreed and confirmed the immediate commencement of three multilateral projects and would prioritise a further six projects for commencement. We understand these first projects will focus on aggressive tax structuring practices in the pharmaceutical sector, the technology sector and in respect of debt factoring arrangements.

Broader context of revenue authority collaboration

The establishment of the Network comes against a broader backdrop of seismic changes in respect of revenue authority collaboration and information exchange.

Most significantly in terms of cross border initiatives is the European Commission’s Tax Transparency Package (TTP) released 18 March 2015. These plans, similar to the JITSIC Network initiative, are designed to target tax avoidance through the sharing of information between the revenue authorities of the member states but go further by seeking to develop collaboration between legislators to close tax loop holes.

The Commission holds the view that companies rely on the complexity of tax rules and the lack of cooperation between member states in order to avoid tax. Therefore, boosting transparency and cooperation between member states has been recognised as imperative in the battle against abusive tax practices.

Whilst the European Union already has procedures to enable automatic sharing of taxpayer financial information, the new proposed TTP rules entail setting up automatic exchange of taxpayer compliance
information between countries. This would include open access to taxation rulings and taxpayer agreements issued by reciprocal member state authorities.

**The takeaway**

The international tax controversy landscape is changing at an unprecedented rate. Multinational organisations should be acutely aware that tax information is increasingly shared between revenue authorities and consider how this may impact compliance reviews. The nature of the information shared and the number of participating jurisdictions are both being broadened, and taxpayers should take a long term view and assume authorities will become increasingly effective at using such information.

Taxpayers in the pharmaceuticals and technology sectors, as well as those who have entered into debt factoring arrangements, are almost certainly going to come under increased scrutiny as part of the first wave of the JITSIC Network's area of focus.

The increased levels of information exchange may see challenges raised against the ability of revenue authorities to request and obtain information. It also is apparent that that some countries are more liberal in their interpretation of what DTAs allow to be shared, whilst others are reading the relevant exchange of information provisions more narrowly.

**Let’s talk**

For a deeper discussion of how these issues might affect your business, please contact:

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